LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 12 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966
No. 663

JOHN WOODS,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, NO. 15,716

HUBERT I. TEITELBAUM,
Attorney for Petitioner,
1122 Frick Bldg.,
Pittsburgh, Pa. 15219.

BATAVIA TIMES, LAW PRINTERS,
EDWARD W. SHANNON, REPRESENTATIVE,
8033 CARLYN DRIVE, PITTSBURGH, PA., 15239
412-851-7403

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented for Review	2
Constitutional Provision and Rule of Criminal Procedure Involved	2
Statement of the Case	3
Reasons for Granting the Writ	4
Opinion of Third Circuit Court of Appeals	8
Opinion of District Court	13
Order	21
Excerpts of Transcript of Portions of Proceedings, June 7, 1965	22

Table of Cases.

Dennis v. United States, 339 U. S. 162 (1950)	6
Photostat Corp. v. Ball, 338 F. 2d 783, 786 (1964)	5, 6
Reynolds v. United States, 98 U. S. 244, 246, 8 Otto 145	4

Statutes.

Constitution of the United States, Sixth Amendment	2
Title 28 United States Code, Sec. 1254 (1)	2
Title 18 United States Code, Sec. 1010	3

Rules.

Federal Rules of Criminal Procedure, Rule 24(a)	2, 5

IN THE

Supreme Court of the United States

October Term, 1966

No. .....

JOHN WOODS,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, NO. 15,716

Counsel, on behalf of the Petitioner, John Woods, prays that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Third Circuit.

Opinions Below

The Opinion of the United States District Court for the Western District of Pennsylvania was filed on November 1, 1965 and is reported at 246 F. Supp. 712 (W. D. Pa. 1965). The Opinion of the United States Court of Appeals for the Third Circuit was entered on August 17, 1966. A Petition for a Rehearing in said Court was denied by Order dated September 15, 1966.

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, United States Code Sec. 1254 (1). The judgment sought to be reviewed was entered when Petitioner's application for a rehearing was denied on September 15, 1966, to review its Judgment and Opinion filed on August 17, 1966 by the United States Court of Appeals for the Third Circuit.

Questions Presented for Review

1. Is a Defendant who is denied the right after request by his counsel to interrogate prospective jurors during the *voir dire* examination to learn from them such basic information as their occupation, family status, and the occupation of the immediate members of their families denied such a right to get basic information so that he cannot have a fair trial within the meaning of the Constitution and the Federal Rules of Criminal Procedure?

Constitutional Provision and Rule of Criminal Procedure Involved

The Sixth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed."

Rule 24(a) of the Federal Rules of Criminal Procedure provides:

> "(a) Examination. The court may permit the Defendant or his attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the Defendant or

his attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper."

Statement of the Case

The Defendant was indicted by the Grand Jury on a twelve count indictment alleging violation of Title 18 United States Code, Section 1010. It was alleged that the Defendant made false statements in a credit application and false statements in a completion certificate. It was alleged that the credit application and completion certificate were made for the purpose of obtaining loans and advance of credit and that such loans and advance of credit would be offered to and accepted by the Federal Housing Administration for insurance.

At the selection of the jury, Defendant requested a *voir dire* examination of each prospective juror individually to determine their family status, their occupations and that of the immediate members of their families, as well as questions as to whether they had had dealings with the Federal Housing Administration or with building contractors. The court refused to permit any individual interrogation of jurors and permitted only certain questions to be directed to the entire panel. No information was available as to the specific occupation of any juror or any members of his family except as to employment by the federal government or law enforcement agencies. The jury list furnished Defendant showed only such occupations as "housewife", "laborers" or "supervisor".

Forty-two prospective jurors were called from which twelve jurors and two alternates were selected. They were seated in the court room, but there was no opportunity to

see the individual jurors or observe their method of answering questions.

Government counsel joined in the Defendant's request for individual questioning of jurors on *voir dire* but despite this, the request was refused.

Motions for judgment of acquittal were made and denied. A motion for a new trial was denied and the Defendant, John Woods, was sentenced to imprisonment for a period of eight years. Subsequently, an appeal was taken to the Court of Appeals for the Third Circuit. However, the judgment of the District Court was sustained and a petition for a rehearing was denied on September 15, 1966.

Reasons for Granting the Writ

The Defendant in a criminal case is entitled to a trial by an impartial jury. The Sixth Amendment to the Constitution guarantees this right.

One of the most basic and fundamental methods of obtaining an impartial jury is by a *voir dire* of the prospective jurors to determine if they have any fundamental prejudices that would prevent them from rendering an impartial verdict.

This right to an impartial jury and a searching *voir dire* examination has been recognized as a basic constitutional right of a Defendant in a criminal case. This Court has set forth their rights, but we submit the trial court in this case and the appellate court have ignored this fundamental right. In *Reynolds vs. United States,* 98 U. S. 244, 246, 8 Otto 145, this court stated:

> "By the Constitution of the United States (Amend VI.), the accused was entitled to a trial by an impartial jury. A juror to be impartial must, to use the language of Lord Coke, 'be indifferent as he stands unsworn.'

> * * * To make out the existence of the fact, the juror who is challenged may be examined on his *voir dire*, and asked any questions that do not tend to his infamy or disgrace."

It is fundamental that a Defendant is entitled to learn by a *voir dire* examination as to whether or not a juror is prejudiced.

The United States Court of Appeals for the Tenth Circuit has recognized in *Photostat Corp. vs. Ball*, 338 F. 2d 783, 786 (1964)

> "that the very purpose of the *voir dire* examination is to develop the whole truth concerning the prospective juror's state of mind, not only to enable the trial judge to determine the actual bias, but to enable counsel to exercise his intuitive judgment concerning the prospective juror's suspected bias or prejudice."

However, the Court of Appeals for the Third Circuit by their decision in this case, has stated even though the letter of Rule 24(a) of the Federal Rules of Criminal Procedure is not observed, they will not interfere with a trial court failure to follow this rule.

In this case, it was clear that the Defendant by his counsel has asked the right to have the jurors questioned individually to determine their occupations, that of the members of their immediate families and their history of dealings with building contractors or the Federal Housing Administration.

Instead, the jurors were asked limited questions by the Clerk. The questions were asked en masse of the forty-two prospective jurors. Defense counsel had no opportunity to question the jurors themselves or to observe the reaction of prospective jurors to such questioning. In essence, by denying the defense the opportunity of probing for prejudice in prospective jurors, the trial court failed

to protect the rights of the accused. See *Dennis vs. United States,* 339 U. S. 162 (1950).

This court does and must exercise a meaningful supervisory capacity for the District Courts. The Court of Appeals held in this case that there was not a single occasion where the Defendant offered a specific question and was denied the right to have it put to the array or a member thereof.

We submit there were at least three. A mere glance at the record at the selection of the jury will show that the Defendant specifically asked that the jurors be interrogated to determine (1) their family status, (2) their occupations, (3) that of the immediate members of their family.

The trial court ruled that it would not permit any individual interrogation of jurors. The Circuit Court affirmed the conviction in this case and as a result, the rule now in the Western District of Pennsylvania is that individual interrogation of jurors is forbidden. Questions may only be asked of the entire panel and if someone raises his hand, then the Court may consider additional questions. With such a practice being followed in the District Court and now being approved by the Circuit Court, the right to a meaningful *voir dire* examination in the Western District of Pennsylvania has vanished.

A searching *voir dire* is permitted in other District Courts as seen by the decision of the Court of Appeals in the Tenth Circuit in *Photostat Corporation vs. Ball,* 338 F. 2d 783, where at page 786 (1964) Chief Judge Murrah pointed out that,

> "No one will gainsay that the denial or substantial impairment of the statutory right of premptory challenge is prejudicial to the constitutional right to a fair and impartial jury."

This, we submit, is exactly what happened here. The Court in the Western District of Pennsylvania apparently is so concerned with saving time to expedite the trial of cases, it is brushing aside fundamental constitutional safeguards.

This Court must not permit computers and statistics to take the place of traditional safeguards. Of what value is a *voir dire* if simple basic questions framed to learn basic information are not permitted to be asked to Jurors? Certainly if a Defendant cannot learn a juror's family status, occupation and occupation of the immediate members of his family, he has been denied a *voir dire* examination.

What more can he do but ask the court to be permitted to interrogate the jurors. When this request is denied, what can he do but obey the court and try to do the best he can.

We respectfully submit that if this Honorable Court fails to review this case, it will permit Defendants in the District Courts throughout the Third Judicial Circuit to be denied the right to a *voir dire* examination and an impartial jury trial.

Respectfully submitted,

MORRIS, SAFIER & TEITELBAUM,

By HUBERT I. TEITELBAUM,
Attorney for Petitioner.

Opinion of Third Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15716

UNITED STATES OF AMERICA,
v.
JOHN WOODS,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued May 16, 1966

Before Staley, Chief Judge, and McLaughlin and Smith, Circuit Judges.

OPINION OF THE COURT

(Filed August 17, 1966.)

By McLaughlin, Circuit Judge.

Appellant John Woods, with a co-defendant, was tried on a twelve count indictment charging violation of 18 U. S. C. 1010 which deals with the falsification of Federal Housing Administration applications. On June 15, 1965, the jury returned verdicts of guilty on counts 5, 7, 10 and 11b. This appeal from that conviction most competently argues what are in effect two grounds for reversal. The

first is that the evidence is legally insufficient to sustain that conviction; the second urges that the trial judge abused his discretion in refusing to permit counsel for the defendant to interrogate the jurors individually.

The judge in his opinion, 246 F. Supp. 712 (1965), denying defendants' motions for acquittal and new trial, went into the sufficiency of evidence problem at length, citing numerous references to testimony and other evidence. Clearly, there were adequate proofs before the jury on which that body could have and did base its verdict.

The issue of whether or not the trial judge abused his discretion in the conduct of the *voir dire* does require some exploration. We are dealing with Rule 24(a) of the Federal Rules of Criminal Procedure. Pursuant to this the court has discretion whether it will examine the prospective jurors or permit the defendant or his attorney and the attorney for the government to do so. If the court examines, the rule states that it "* * * shall permit the defendant or his attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper."

In the case at bar the judge, who presided over the entire *voir dire* examination, chose to conduct the interrogation through his clerk in accordance with the practice of the particular district. Defense counsel requested permission to "* * * question the jurors individually on the *voir dire* to determine their family status, their occupations, and that of the immediate members of their families, as well as certain other questions which the Court has approved but only for general question rather than individual question." The government joined in that motion.

The judge ruled, "The Court will not permit any individual interrogation of jurors, but appropriate questions may be framed to ask of the entire panel covering the points that have been mentioned, that are relevant to this case." Seemingly the trial court did not feel that the expenditure of the time which would be taken up by a full *voir dire* inquiry initially for each individual was warranted in this trial. The court, however, did indicate that the defense would be given reasonable opportunity to have proper inquiries made of panel members. This is evidenced by the following dialogue between defense counsel and the court:

> "Mr. Libenson: Off the record, may I ask the Court how we are going to get—I mean write down the answers to the general questions? Is this going to be by the show of hands? For instance, if you ask if they own their own home.
>
> "The Court: If any of them answer affirmatively, then we can consider whether any further questions should be asked of that individual.
>
> "Mr. Libenson: Oh, well, then, that is—
>
> "The Court: If they all say they did not have any dealings with the F. H. A., then we will take it that they haven't.
>
> "Mr. Libenson: I see.
>
> "The Court: But if somebody has, then if we think it proper to go into what that dealing was, as bearing on the fitness to serve as a juror, that should be followed up. But if the answers are all negative then we won't go further."

And as the court stated in its opinion, p. 716, it "* * * permitted all questions desired by counsel to be asked." The transcript itself is laden with numerous instances wherein individual examination was had and as a result

of some of the answers challenges for cause granted. There was not a single occasion where appellant offered a specific question and was denied the right to have it put to the array or a member thereof. In the light of the above we cannot hold that appellant was denied opportunity to interrogate prospective jurors in an effort to determine possible prejudice upon which challenges could be based. Though appellant correctly cites our United States v. Napoleon, 349 F. 2d 350 (1965) as enumerating basic rights which must be allowed a defendant during the *voir dire*, the record fails to reveal that there was actual violation of those rights in the district court.

In an affidavit presented on behalf of defendant-appellant to the district court in conjunction with the motions for acquittal or new trial, the affiant is an assistant manager of the Mellon Bank. He avers that a Mrs. Helen Wagner and her husband have an F. H. A. Home Improvement Loan with the Mellon Bank and a balance of $123,84 on September 16, 1965. Mrs. Wagner was one of the jurors who convicted appellant. She did not respond when the question about having had dealings with the F. H. A. was addressed to the panel. That might have been an oversight on her part but assuming she deliberately refrained from answering, appellant has not established wherein he was prejudiced. We do not consider that the simple circumstances of Mrs. Wagner having an F. H. A. Loan, standing alone as it does, would affect her ability to render a just verdict. United States v. Eury, 268 F. 2d 517 (2 Cir. 1959).

Direct interrogation in part at least by the attorneys for the litigants may be preferbale at times but this under the Rule is within the discretion of the court. Questioning by the latter is in accord with Rule 24(a) and includes questions submitted by counsel. The judge did have his

clerk read his questions and those from the attorneys, to the jury. This, while not categorically mentioned by the Rule comes within the latter's language " * * *or may itself conduct the examination." The judge did conduct it by having his questions asked of the jury by his clerk together with additional inquiries from counsel, approved by him, also read to the jury for him by his clerk. Where a judge is suffering from a minor disability *e.g.* his voice is strained, the reading of his questions and those of counsel by his clerk could be useful. And it must be conceded that though there be no such condition, as was apparently the fact in this appeal, the non reading of the questions by the judge himself would save him at least a certain amount of trial wear and tear. Nevertheless, the *voir dire* examination is an integral, vital element of a fair trial. It is a portion of the unescapable burden of judges. They, despite any inconvenience to themselves, realize that theirs is the immediate responsibility for its sound functioning and that is malfunction might result in reversible error. Under all the circumstances we strongly suggest that the letter of Rule 24(a) be carefully observed *inter alia* in this respect; *i.e.* if the trial judge conducts the *voir dire* examination or part thereof, that he do so personally, which will include his reading of queries from the attorneys.

In this appeal we find no abuse of discretion or prejudicial error by the trial court with reference to jury selection.

The judgment of the district court will be affirmed.

A true Copy:

Teste:

....,

Clerk of the United States Court of Appeals for the Third Circuit.

Opinion of District Court

(Filed November 1, 1965.)

Dumbauld, J.

On June 15, 1965, both defendants, John Woods and Julius Cooperman, were found guilty by a jury under Counts 5, 7, 10 and 11b of violations of 18 U. S. C. 1010. At the same time the defendants were found not guilty under Counts 1, 2, 8, 11a, and 12 of the indictment. The original indictment was in twelve counts, but the other counts were withdrawn from the jury pursuant to rulings of the Court.

18 U. S. C. 1010 reads as follows:

> "*Whoever, for the purpose of obtaining any loan or advance of credit from any person,* partnership, association, or corporation *with the intent that such loan or advance of credit shall be offered to or accepted by the Federal Housing Administration for insurance,* or for the purpose of obtaining any extension or renewal or any loan advance of credit, or mortgage insured by such Administration, or the acceptance, release, or substitution of any security on such a loan, advance of credit, *or for the purpose of influencing in any way the action of such Administration, makes, passes, utters, or publishes any statement, knowing the same to be false,* or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, *or wilfully overvalues any security, asset, or income,* shall be fined not more than $5,000 or imprisoned not more than two years, or both" (Italics supplied).

It will be noted that the elements of the offense, which must be proved by the Government beyond a reasonable doubt, include the following: (1) *Defendant's act:* (a) The defendant must make, pass, utter, or publish a statement; which defendant knows to be false. (b) Another act punishable is wilfully overvaluing any security, asset or income. (2) *Defendant's purpose:* Whichever of the foregoing acts is committed, it must be done (a) with the specific intent or purpose of obtaining a loan or advance of credit from a financial institution with the intent that such loan or advance of credit shall be offered to or accepted by the Federal Housing Administration for insurance, (b) or for the purpose of influencing in some way the action of that agency.

Thus for the conviction to stand there must be sufficient evidence to sustain a verdict that each of the defendants made or passed a statement, knowing the same to be false, with the intent or purpose of obtaining a federally insured loan or of influencing the action of the Federal Housing Administration; or wilfully overvalued a security or asset with the same intent. The Court so charged (Tr. 306-310). Mention of the particular counts on which convictions occurred was made by the Court at pages 313-15.

Specifically, in Count 5, relating to the Berta loan, the charge is that the salary or wages of Berta was inflated or overstated. In Count 7, relating to the Denney loan, the charge is that the date of acquisition of a home was incorrectly stated and that the price was overstated. In Count 10, relating to the Dott loan, the charge is that a copy of the contract was not given to the home owners. In Count 11b, relating to the Kuhns loan, the charge is inflation or overstatement of salary.

With regard to Count 5, Berta testified (Tr. 118) that his wages were $350.00 a month, and they were stated on the printed application (Exhibit 11A) as $550.00. Both Cooperman and Woods signed this application as salesmen. Berta testified (Tr. 115) that both men came to the house.

There is, therefore, sufficient evidence against both defendants to sustain the conviction under Count 5.

Under Count 7, Denney testified (Tr. 189) that he bought his home in 1960 for $9100.00, whereas on the credit application Exhibit 14b the date is given as 1956 and the price $15,000.00. This application is signed by Cooperman alone as salesman.

In this connection it may be noted that the application shows a mortgage debt outstanding of $11,500.00, so that a value of only $9100.00 might not have looked good.

On cross examination Denney testified that actually he had not received a deed to the home but it was being purchased on Articles of Agreement (Tr. 201). Defendants strenuously contend that by reason of this fact it is not a false statement to give the date of purchase and price paid incorrectly, inasmuch as in fact there was no purchase and there was no purchase price. However, the form for the credit application in the line below the one filled in contains a line reading "Is being bought on contract by" with a blank for price paid. Consequently, strictly speaking, it would be a false statement to fill in the blanks which were filled in rather than those on the line below, in view of the facts.

The date of purchase (in view of inflation) and the price paid are both significant data in connection with any determination of the value of the asset (residence property) involved. Did the defendants "wilfully overvalue" this

asset? The jury's verdict would have to be taken as conclusive on the issue of wilfulness. Was there overvaluation by them?

Strictly speaking defendants did not place any valuation on this asset. They simply made or passed false statements regarding matters relevant to valuation and from which an inference as to valuation could be drawn by the lending institution or the F. H. A.

But the offense charged in Count 7 is not wilful overvaluation of an asset. If it were, defendants might be entitled to prevail as to this count. What is charged is making false statements. This charge is established by the proof.

There is, therefore, sufficient evidence to establish the conviction of defendant Cooperman under Count 7. Inasmuch as defendant Woods signed the completion certificate on this transaction, and also wrote to the home owners sending them an additional copy of the contract and is shown by testimony to have participated in the transaction (Tr. 180, 191, 213), we believe that the jury could reasonably have found that defendant Woods was a knowing participant in all aspects of the transaction, even though he did not sign the certificate as salesman.

Under Count 10 both Mrs. Dott and Mr. Dott testified that they at no time ever received a copy of the contract (Tr. 256, 275). It is the Court's recollection that both of these witnesses appeared more intelligent than the other home owners involved in dealings with the defendants. The jury might well have placed credence in their testimony rather than that of defendants. Defendants, of course, contend that they routinely furnished a copy of the contract to all their customers, but this is a jury ques-

tion. The testimony indicates that both defendants negotiated this transaction (Tr. 255, 261). In particular, defendant Cooperman was implicated (Tr. 258, 260, 263-64).

There is thus sufficient evidence to sustain the conviction of both defendants under Count 10.

Under Count 11b, Exhibit 22b, signed by Cooperman alone, states the home owner's salary as $575.00 per month. He testified that his yearly earnings were $5,376.75. Mathematically this amounts to $464.72 per month. He was employed at an hourly rate. It is the Court's recollection that this witness made a favorable impression on the witness stand, and might well have been believed by the jury, in spite of some confusion arising during cross examination.

The testimony shows that both defendants were present when the home owners signed the papers and when information was given to the defendants regarding the matters to be used in filling out the forms (Tr. 215-16, 218, 221, 226).

We, therefore, conclude that there is sufficient evidence against both defendants to sustain a conviction under Count 11b.

Cooperman testified that Woods filled in the Berta credit application (D. Tr. 28). Cooperman testified that he himself filled in the Denney application, by using a figure taken from the appraisal of the bank that made the consolidation of debts loan (D. Tr. 30, 32, 50).

Cooperman testified that he signed the credit application in the Dott case, but Woods signed Exhibit 3, the completion certificate (D. Tr. 52).

In the Kuhns transaction Exhibit 22B was signed by both defendants (D. Tr. 54-55). Woods filled it out but

Cooperman was there (D. Tr. 16, 41, 45). Cooperman testified that all the forms that were signed by him were filled in by him (D. Tr. 21). Woods testified that both defendants were present when all the contracts were signed (D. Tr. 69). Woods testified that the contract and the credit applications were sent to the bank before completion of the work in every case (D. Tr. 77).

It is ingeniously argued on behalf of the defendants (Brief p. 5) that the proof does not show that the false documents were passed with the necessary intent of obtaining an F. H. A. loan or influencing the action of the F. H. A. It is argued that the testimony of the witness Barry from the Mellon bank shows that the bank actually relied on telephone calls from defendants' office in issuing commitments, and that the written applications were mere formalities which were checked only for completeness and not for the reliability of their content.

However, as defendant Woods testified (D. Tr. 77) the documents were uniformly transmitted to the bank before defendants did the jobs. It seems clear that without the physical presence of the necessary documents the bank would not disburse a loan even though as a practical matter it would make a commitment in reliance on telephoned information, supplemented by such credit checks as it might wish to make. There is no doubt that everyone knew that what was involved in these transactions was F. H. A. loans (that is, at least the banks and the defendants knew, although many of the home owners testified that they did not know that they were making F. H. A. loans).

Furthermore, Paragraph 201.5 of the F. H. A. Regulations contemplates issuance of commitments by banks only after they receive the credit application. Hence it would seem that, if a lending institution chooses to make a pre-

mature commitment at its own risk, the prescribed routine would not be thus disrupted to the extent that parties furnishing false statements in credit applications or other documents required by the Government and in fact subsequently supplied could convincingly contend that these documents were not furnished for the purpose and with the intent of effecting an F. H. A. improvement loan.

There is likewise no merit in defendants' contention that the procedure followed in selection of the jury was inadequate.

The jury was selected in strict accordance with Criminal Rule 24(a). It also complied fully with all suggestions contained in dicta of the Court of Appeals in *Stirone v. U. S.*, 341 F. 2d 253, 256 (C. A. 3, 1965), *Cf. U. S. v. Sigal*, 341 F. 2d 837, 840, 847 (C. A. 3, 1965) and *Haith v. U. S.*, 342 F. 2d 158, 159 (C. A. 3, 1965).

The trial judge was present at all times during the *voir dire* and permitted all questions desired by counsel to be asked. The Court *sua sponte* suggested that a pertinent question in this case would be whether the jurors had had any dealings with the F. H. A. (Tr. 6, 27). This question was asked, of a group of jurors including Helen Wagner, No. 126 on the list (Tr. 10, 13). The question was repeated in simpler language by Mr. Teitelbaum (Tr. 22), and five jurors stated they had had F. H. A. loans: Margaret Hornyak, Hyman Weisman, Thomas Zolbe, Margaret Giansante, and Jean Elaine Gaydeski (Tr. 22-24). Of these, Zolbe was discharged for cause, on the ground that his brother was with the F. B. I. Weisman was removed on the Government's second challenge. Hornyak was eliminated by Mr. Teitelbaum on his third challenge. Gaydeski was struck by Mr. Libenson, counsel for Cooperman, on his fifth challenge, and Giansante on his seventh.

It thus appears that counsel for defendants did not consider the circumstances of a juror having had an F. H. A. loan to be of much importance (See comments of Mr. Teitelbaum at Tr. 27).

We therefore do not attach much weight to the subsequently filed undated affidavit of a Mellon Bank assistant-manager to the effect that Helen Wagner and her husband "have an FHA Title I Home Improvement Loan #58018, dated September 2, 1964, for twenty four (24) payments at $13.76 a month", the balance on September 15, 1965 being $123.84 for furnace installation.

It is to be noted that counsel do not say when they obtained this information, or whether they had it at the trial, or whether if they had had it then it would have made any difference in their handling of the case. We cannot believe that it would have been of any significance in view of what has been set forth above.

In view of the small amount involved and the fact that defendants make no charge of any actual irregularity against Mrs. Wagner, it would seem that her failure to disclose this small loan was doubtless due to inadvertence, lapse of memory, or unfamiliarity with business details perhaps handled by her husband. It seems impossible that it can have affected in any way the outcome of the case or the fairness of the proceedings in this Court.

For the foregoing reasons defendants' motions are denied.

ORDER.

AND NOW, this 1st day of November, 1965, upon consideration of defendants' motions for acquittal and new trial, after argument, and the Court being of opinion, for the reasons set forth in the foregoing opinion, that the same should be denied,

IT IS ORDERED that said motions be and the same are hereby denied, and that defendants shall present themselves in due course for sentence.

(s) DUMBAULD,
United States District Judge.

Copies to:

Hubert I. Teitelbaum, Esq.,
1122 Frick Building,
Pittsburgh, Pa. 15219.

Jerome M. Libenson, Esq.,
1018 Frick Building,
Pittsburgh, Pa. 15219.

Robert E. Tucker, Esq.,
Assistant U. S. Attorney,

Gustave Diamond, Esq.,
United States Attorney,
633 United States Courthouse,
Pittsburgh, Pa. 15219.

[1] **Excerpts of Transcript of Portions of Proceedings**

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

JOHN WOODS and JULIUS COOPERMAN, also known as J. COOPERMAN.

Criminal Action No. 65-119.

Trial held at Pittsburgh, Pennsylvania, beginning Monday, June 7, 1965.

Before:

Honorable Edward Dumbauld, Judge, and a Jury.

Counsel Present:

For the Government: Robert E. Tucker, Esq.;
For Defendant Woods: Hubert I. Teitelbaum, Esq.;
For Defendant Cooperman: Jerome M. Libenson, Esq.

Ruby M. Palmer, Official Reporter.

• • •

---

[4] Mr. Teitelbaum: May it please the Court, on behalf of defendants Woods and Cooperman, we respectfully request the right to question the jurors individually, on the *voir dire*, to determine their family status, their occupations, and that of the immediate members of their families,

as well as certain other questions which the Court has approved but only for general question rather than individual question.

Mr. Tucker: If the Court please, the Government would like to be heard on this motion also.

The Court: All right.

Mr. Tucker: In view of Judge Biggs' disapproving of the method by which we in the Western District of Pennsylvania have been selecting criminal juries in the past, I believe that the defendants should be given the right to question the prospective jurors individually. I feel that it is the opinion of the Third Circuit that the *voir dire* must be conducted in the presence of the district judge who is going to try the case.

The Court: Which is going to be done in this case.

[5] Mr. Tucker: And that the defendants should be given the opportunity to question as extensively as they wish, within bounds, and I feel that the request of the defense attorneys in this case, just to ask the individual jurors, so as not to cause any embarrassment to them, is proper. What their husbands' occupations are, and the other questions that have been listed, such as, "Are you married?" and the actual occupation of the husband, and whether they have any children employed in the Western District of Pennsylvania, and if so what their employment is, I feel should be asked individually.

The Court: The Court will not permit any individual interrogation of jurors, but appropriate questions may be framed to ask of the entire panel covering the points that have been mentioned, that are relevant to this case.

Mr. Tucker: I would like also to put on the record that jury lists have been furnished to the defendants' counsel, listing the occupations, whether the juror is a male, and also whether or not the female prospective juror is a housewife or if she is—

The Court: It shows their addresses and the county from which they come, I believe.

Mr. Teitelbaum: Yes, sir. But it does not actually show their occupations, and I therefore ask that a copy of the jury list be appended to the record. It shows such [6] things as supervisor, or laborer, but it doesn't show anything in any detail, that would tell us—

Mr. Libenson: I would also like to put on the record that we as defense counsel relied on the prior practice of having the opportunity of individual interrogation.

The Court: The prior practice appears to be viewed with some disfavor, and we are not following it in this case. It may be that in some cases it may be all right.

Mr. Libenson: Off the record, may I ask the Court how we are going to get—I mean write down the answers to the general questions? Is this going to be by show of hands? For instance, you ask if they own their home.

The Court: If any of them answer affirmatively, then we can consider whether any further questions should be asked of that individual.

Mr. Libenson: Oh. Well, then that is—

The Court: If they all say they did not have any dealings with the F. H. A., then we will take it that they haven't.

Mr. Libenson: I see.

The Court: But if somebody has, then if we think it is proper to go into what that dealing was, as bearing on the fitness to serve as a juror, that should be [7] followed up. But if the answers are all negative, then we won't go further.

Mr. Teitelbaum: The Judge has ordered that a copy of the jury list be appended to the court record, so will you furnish the court reporter with one for that purpose.

I guess we should mark that as some kind of an exhibit —the jury list. I don't know whose.

(Jury list marked as Court Exhibit No. 1.)

(In open court.)

* * *

[22] Mr. Teitelbaum: Would you repeat the question, sir, as to whether anybody has had an F. H. A. loan, on the jury?

The Clerk: The one about dealings?

Mr. Teitelbaum: Yes. I am not so sure they understood the question. Whether anybody borrowed any money on F. H. A. loans, is what we are getting at.

The Clerk: Have you or any members of your immediate family had any dealings with the Federal Housing Administration or with building contractors.

A Juror: I didn't understand it.

Mr. Teitelbaum: That is what I was afraid of.

The Clerk: No. 5, what is your name, please?

Juror: Margaret Hornyak. We have an F. H. A. loan on the home.

The Clerk: It is now in existence?

[23] Mrs. Hornyak: Seven years.

The Clerk: Seven years.

(One juror in the back, No. 12.)

Juror: I have one on mine.

The Clerk: Your name?

Juror: Hyman Weisman.

The Clerk: You are Juror No. 12, Hyman Weisman.

Mr. Weisman: I have an F. H. A.

The Clerk: You have an F. H. A. loan?

Mr. Weisman: Yes. Almost finished.

The Clerk: I see one in the back. Your name?

Juror: Thomas Zolbe. I have an F. H. A. loan.

The Clerk: Thomas Zolbe, Juror No. 36.

The other lady in the back, kindly give your name?

Juror: Margaret Giansante.

The Clerk: Margaret A. Giansante, Juror No. 38.

Mrs. Giansante: I have an F. H. A. loan.

The Clerk: You have an F. H. A. loan?

Mrs. Giansante: It is just about finished.

Mr. Teitelbaum: If it please the Court, may we ask specifically whether any of those are home improvement loans, as contrasted with purchase loans?

The Court: All right.

The Clerk: Are any of those loans improvement [24] loans?

(Hand raised.)

The Clerk: Would you please stand and give your name again?

Mr. Weisman: Hyman Weisman.

The Clerk: You are Hyman Weisman, Juror No. 12.

Any other members whose loans are improvement loans?

Your name?

Juror: Mrs. Jean Elaine Gaydeski. We have an improvement loan with the Federal Housing Administration.

The Clerk: You are Juror No. 35, Jean Elaine Gaydeski.

Anyone else?

(No response.)

* * *

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 663

JOHN WOODS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 8-12) is not yet reported. The opinion of the district court (Pet. 13-21) is reported at 246 F. Supp. 712.

JURISDICTION

The judgment of the court of appeals was entered on August 17, 1966. A petition for rehearing was denied on September 15, 1966. The petition for

a writ of certiorari was filed on October 12, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was an abuse of discretion by the trial court in the conduct of the voir dire.

STATEMENT

After a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted on four counts of an indictment charging the falsification of documents for the purpose of obtaining loans affecting the action of the Federal Housing Administration in violation of 18 U.S.C. 1010. He was sentenced to imprisonment for 10 years subject to modification after a study in accord with 18 U.S.C. 4208(b) (A. App. 3a).[1] The court of appeals affirmed.

On voir dire (See G. App. 1b-10b), petitioner's counsel requested the right to question the jurors individually to determine their family status, their occupations and those of the immediate members of their families "as well as certain other questions which the Court has approved but only for general question rather than individual question." The request was concurred in by government counsel who noted, however, that the jury lists, which had been furnished the defense, contained information as to

[1] "A. App." refers to the Appellant's Appendix below and "G. App." to the government's appendix.

the jurors' occupations and other matters. The court observed that the practice of individual interrogation had been viewed with some disfavor and that in this case he would follow the practice of having only those jurors who gave affirmative answers to general questions subjected to specific follow-up inquiries submitted by counsel. Defense counsel voiced no objection.

Thereafter the array of jurors was instructed to listen carefully to certain questions, and each juror was told to raise his hand should his answer to any question be affirmative. This procedure was followed throughout with the clerk first asking general questions concerning acquaintance with the parties or their counsel, involvement in law suits, dealings with F.H.A. or building contractors, and employment of the jurors and members of their families by law enforcement or other government agencies, building construction firms, lending, or financial agencies. Each juror who raised his hand was asked to stand, identify himself and give details as to such employment, involvement, or association. Each of five[2] jurors who indicated that they had obtained F.H.A. loans was asked whether the loan was currently outstanding and, at the request of defense counsel, whether any of the loans were home improvement loans. Two jurors answered the latter question affirmatively and

---

[2] Of these five, one was discharged for cause on the ground that his brother was employed by the F.B.I.; the others were discharged on peremptory challenges—one by the government, one by petitioner's counsel, and two by counsel for a co-defendant (see Pet. 19).

were again asked to identify themselves. Counsel submitted no further inquiries in this regard. The court asked the defense (who had challenged an Internal Revenue employee and a brother of an F.B.I. employee for cause) whether the fact that certain jurors had existing F.H.A. home improvement loans would have any bearing. Defense counsel replied (G. App. 9b):

> I don't think there is any basis to challenge them for cause. They can go either way here. You don't know what to do in that kind of situation. They may have had pleasant experiences and may have had unpleasant experiences.

Both sides thereafter indicated satisfaction with the jury (G. App. 10b).

ARGUMENT

The court below properly held that petitioner was not denied any rights by the trial court's conduct of the voir dire. The court decided not to permit counsel to interrogate the prospective jurors but rather to have counsel supplement the court's general examination by submitting further inquiries. The method adopted is expressly authorized by the Federal Rules of Criminal Procedure[3] and in no way operated to

---

[3] Rule 24(a) of the Federal Rules of Criminal Procedure provides:

> EXAMINATION. The court may permit the defendant or his attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the

the prejudice of petitioner. This record does not support the contention that defense counsel was prevented from having the prospective jurors examined as to their family status or occupation or the occupation of immediate family members or any other matter. Rather the transcript[4] amply supports the conclusion of the court below (Pet. 11) that there "was not a single occasion where appellant offered a specific question and was denied the right to have it put to the array or a member thereof." While the court of appeals (Pet. 12) was critical of the trial judge's decision to have his questions, and those of counsel, propounded to the jury by his clerk rather than stating the questions himself, it had no doubt that the trial judge was not required to permit counsel to interrogate the jurors. Petitioner does not suggest that he was prejudiced by the trial judge's use of his clerk in this manner.

It is well established that the trial court had broad discretion with respect to examination on voir dire. See *Dennis* v. *United States*, 339 U.S. 162, 168. Here there is no showing that that discretion has been abused.

---

attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

[4] For a more complete picture of the proceedings, we are lodging with the Clerk of this Court a copy of the transcript.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
JULIA P. COOPER,
Attorneys.

NOVEMBER 1966

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 237185 350